

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**DENIS L. CURLER,
Complainant,**

**DOCKET NO. 08390
EEOC NO. 053770515**

**vs.
CITY OF FORT WAYNE,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Charles L. Favey, Hearing Officer for the Indiana Civil Rights Commission ("ICRC"), and enters his Recommended Findings of Fact, Conclusions of Law and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes now Complainant, Denis L. Curler ("Curler"), by counsel, and files his Objections to Recommended Findings of Fact, Conclusions of Law, and Order, which Objections are in words and figures as follows:

(H.I.)

And comes now Respondent, City of Fort Wayne ("the City"), by counsel, and files Respondent's Objections, which Objections are in words and figures as follows:

(H.I.)

And comes now ICRC, and holds its Hearing on Objections on January 21, 1982. Commissioners present were the Chairman, James A. Lang, who presided, Mary W. Shafer, C.T. Boyd, and David L. Staples. Complainant Curler ("Curler") was present and represented by counsel, Alice M. Craft. The City was represented by counsel, Bruce Norman Stier. Arguments from counsel for both parties were heard. And comes now ICRC, having considered the above and being duly advised in the premises, and finds and rules as follows:

1. The parties agree that the second sentence of Finding of Fact 6 should be modified to refer to the Humane Shelter rather than to the Airport Authority.
2. The party objecting to a recommended decision of a Hearing Officer has the burden of demonstrating some error on the part of the Hearing Officer.
3. Curler has failed to carry this burden.

IT IS, THEREFORE, ORDERED

1. Curler's Objections to Recommended Findings of Fact, Conclusions of Law, and Order should be, and the same hereby are overruled.
2. The Findings of Fact, Conclusions of Law, and Order recommended by the Hearing Officer in the recommended decision, a copy of which is attached hereto and incorporated by reference herein, should be, and the same hereby are, adopted as those of ICRC with the exception that the second sentence in Finding of Fact six (6) is modified to read as follows:

The agreement between Mr. Evans and Mr. Huntine provided for the placement of Mr. Davis in a position as relief utility worker with the Fort Wayne Human Shelter.

3. Curler's complaint should be, and the same hereby is, dismissed.

Dated: February 12, 1982

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FINDINGS OF FACT

Complainant appears in person and by counsel and Respondent appears by counsel and this cause having been submitted and evidence heard, the Hearing Officer now makes the following Findings of Fact and Conclusions of Law:

1. Denis Lee Curler, a white male, was hired as a temporary seasonal employee of the City of Fort Wayne in its Parks Department on April 12, 1976, and continued in that capacity until January, 1977. Three other individuals, James Davis, a black male, Thomas Walls, a white male, and Samuel Terry, a black male, were hired by the City in the same capacity. Their dates of hire were respectively April 29, 1976, May 2 and 7, 1976.

2. Shortly prior to September 5, 1976, the City posted for bidding by Park Department employees an opening as a kennel worker in the City's Humane Shelter. Under the terms of the collective bargaining agreement applicable to the temporary seasonal employees of the Park Department, such employees were eligible to bid on such openings provided no regular employees did so. Under the terms of the collective bargaining agreement, preference was to be given to the employee with the greatest seniority if there were more than one qualified applicant for a job opening which had been posted for bids.

3. Curler, David, Walls and Terry all bid on the kennel worker job opening. At the time in question, the Fort Wayne Human Commission, a private eleemosynary organization, supervised the operation of the Human Shelter for the City Fort Wayne. Normally the Superintendent of the Shelter, a full time employee of the City, conducted interviews for job openings in the Shelter, but at the time in question, that responsibility had been assumed by the President of the Human Commission because of problems at the shelter. At the time, the President was Dr. F.H. McClead, a licensed veterinarian of many years experience, who was engaged in a small animal practice in Fort Wayne.

4. Dr. McClead interviewed all four applicants for the position of kennel worker and determined that Mr. Curler was not qualified for the position. In Dr. McClead's opinion, based on his many years of experience, many individuals are not capable emotionally of assisting in the destruction of animals and would not remain long on a job that involved that duty. Assistance in the destruction of animals was an important part of the kennel worker position for which Mr. Curler and the other bidders had applied. Dr. McClead's determination that Mr. Curler was not qualified for the kennel worker position was based solely on his determination that Mr. Curler would not be able to cope with the phase of the job that required the destruction of animals.

5. Mr. Terry was hired by the City on September 5, 1976, to fill the kennel worker position notwithstanding the fact that he had the least seniority of the remaining bidders. Curler, Wells and Davis all filed grievances pursuant to the applicable collective bargaining agreement, of the three, only Davis was a member of the Union representing the City's park employees.

6. On November 3, 1976, Davis' grievance was settled pursuant to an agreement between the City acting through its Director of Personnel, Arthur Evans, and the Union representing the City's Park Department employees acting through its Business Agent, James Huntine. The agreement between Evans and

Huntine provided for the placement of Davis in a position as relief utility worker with the Fort Wayne Airport Authority. Davis placement in that position was made outside the usual bidding procedure, a practice sanctioned by the collective bargaining agreement. The grievances of Curler and Walls were never resolved.

7. The fact that Davis' grievance was resolved whereas the grievances of Curler and Walls were not resulted from the Union's greater advocacy of Mr. Davis' case due to the fact that only Davis was a member of the Union. Such disposition of the grievances was not due to discrimination against Curler or Walls on the part of the City or the Union on account of their race.

8. At the time in question, the City of Fort Wayne did not have in effect an affirmative action program for the hiring of minorities, or if such program was in existence, it was not at such time being implemented, and the placement of Mr. Terry in the kennel worker job and the placement of Davis in the relief utility worker job in preference to Curler was not the result of an attempt to implement any such program.

CONCLUSIONS OF LAW

The failure of the City to hire Mr. Curler in the kennel worker position for which he bid, and the failure of the City to place Mr. Curler in the relief utility worker position for which Mr. Davis was hired, was not the result of discrimination or any intent to discriminate on the basis of race by the City.

RECOMMENDATION

The Hearing Officer recommends that the Commission find for the Respondent, the City of Fort Wayne, and against the Complainant, Denis Lee Curler, and enter an order denying any relief as against the Respondent, City of Fort Wayne, on the Complaint.

Dated: August 12, 1981